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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

SERGIO ALBERTO CHAVEZ,

Defendant and Appellant.

A147970

(Del Norte County
Super. Ct. No. CRF1594902)

Defendant Sergio Chavez appeals from a judgment entered on his plea of no contest to a misdemeanor count of elder abuse. His counsel has asked this court for an independent review of the record to determine whether there are any arguable issues. (*People v. Wende* (1979) 25 Cal.3d 436.) Chavez was informed of his right to file a supplemental brief and did not do so. We conclude there are no arguable issues and affirm.

Chavez and his codefendant were employed at a nursing home in Crescent City. In October 2015, the two men were charged with five felony counts of elder abuse based on acts against five residents of the home earlier that month.¹ After the complaint was filed, two of the victims appeared at a conditional examination held at the home. A woman who was 77 years old at the time of the incidents testified that Chavez climbed into her bed and slapped her. He had also said things “[m]any times” that made her feel

¹ These charges were brought under Penal Code section 368, subdivision (b)(1). All further statutory references are to the Penal Code. Chavez’s codefendant did not appeal, and we do not discuss the facts pertaining to him.

uncomfortable and scared. A woman who was 92 years old at the time of the incidents testified that she pressed her call button at night and Chavez came into her room. Before assisting her, he held his hand over her mouth so that she could not speak.

Under a plea agreement, Chavez pleaded no contest to an amended misdemeanor count of elder abuse and entered a *Harvey* waiver.² The remaining counts were dismissed. After considering letters in support of Chavez, who was 18 years old at the time of the crime, statements on behalf of certain victims, and the parties' arguments, the trial court denied probation and sentenced him to the maximum term of six months in county jail. (See §§ 19, 368, subd. (c).) In doing so, the court indicated that its primary consideration was the victims' vulnerability.

No error appears in the entry of the plea or the sentencing proceedings. Chavez was advised of his constitutional rights and the consequences of his plea before he entered it, and his sentence was within the term range that he acknowledged was possible. The trial court found that his waiver of rights was knowing and intelligent, that the plea was free and voluntary, and that there was a factual basis for the plea. The court also relied on proper factors in denying probation. Chavez was represented by counsel throughout the proceedings.

There are no meritorious issues to be argued on appeal. The judgment is affirmed.

² The amended count was brought under section 368, subdivision (c). "A *Harvey* waiver permits the sentencing court to consider the facts underlying dismissed counts . . . when determining the appropriate disposition for the offense . . . of which the defendant stands convicted." (*People v. Munoz* (2007) 155 Cal.App.4th 160, 167, discussing *People v. Harvey* (1979) 25 Cal.3d 754.)

Humes, P.J.

We concur:

Margulies, J.

Banke, J.

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